UNITED NATIONS

CCPR

International Covenant on Civil and Political Rights

Distr.
GENERAL

CCPR/C/SR.1398
7 April 1995

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

Fifty-third session

SUMMARY RECORD OF THE 1398th MEETING

Held at Headquarters, New York,
on Monday, 27 March 1995, at 3 p.m.

Chairman: Mr. AGUILAR

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Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

95-80511 (E)

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The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Report of Haiti (continued) (CCPR/C/105)

1. At the invitation of the Chairman, Mrs. Denerville and Mr. Aubourg (Haiti) took places at the Committee table.

2. Mrs. DENERVILLE (Haiti), replying to earlier questions, said that the National Commission on Truth and Justice was made up of three Haitian members and three foreign nationals: a representative of the United Nations and the Organization of American States, a representative of the Inter-American Commission on Human Rights, and a representative of the Caribbean Community (CARICOM). The Commission had already begun to function and was to meet with the Ministry of Justice that week to coordinate its work. The Commission would receive complaints of human rights violations and assist plaintiffs in obtaining recourse through the courts.

3. Mr. AUBOURG (Haiti) said that the question of the amnesty had originated in the Governors Island Agreement. Although the Haitian Government had to respect the terms of the Amnesty Act, the amnesty itself was limited to crimes committed for political reasons. Under Haitian legislation, however, a crime was still a crime and a citizen could bring a civil action for damages in respect of an offence that was not covered by the amnesty.

4. Mrs. DENERVILLE said that under Haitian law detainees awaiting trial had to be held separately from prisoners serving a sentence. The Committee should understand that there were very serious problems in the Haitian prison system as a result of overcrowding. Nevertheless, the Government was committed to improving prison facilities and, with the help of international organizations, was carrying out programmes to improve prison conditions, feed the prisoners and provide them with health care. The Government was determined to solve those problems, but its efforts were impeded by a lack of resources. In order to reduce overcrowding, sentences were being reviewed in some cases to determine whether imprisonment was necessary.

5. Mr. AUBOURG (Haiti) said that the previous judicial system in Haiti had been almost completely dismantled and the current Government had inherited a catastrophic situation in all areas of the administration of justice. The Government was committed to reforming the entire system and had drawn up a number of programmes to train judges, including the establishment of a school for judges. Selected law students and young lawyers would undergo training courses in order to become qualified in the administration of justice and be appointed as judges. The Committee should clearly understand that the Government firmly intended to establish an effective judicial system and required the necessary time and resources to carry out that task.

6. Mrs. DENERVILLE, referring to the judicial reforms, said that her Government had already carried out numerous training courses and seminars for justices of the peace and examining magistrates with the assistance of the United States Agency for International Development (USAID) throughout the country. That effort had yielded positive results and would be continued. The Government was determined to ensure the effective training of judges in order to establish a sound judicial system in Haiti. Unfortunately, the lack of resources and material means was a serious obstacle in that regard.

7. When the multinational forces had arrived in Haiti prior to the return of President Aristide, the Haitian people had expected that the military and police personnel would be disarmed. Unfortunately, the failure to carry out a disarmament programme had resulted in a widespread climate of violence and insecurity in the country. There were still heavily armed persons who were beyond the reach of the law. The Government had inherited that situation and was committed to establishing an effective police force in order to tackle it. Training courses were being carried out with the help of foreign countries, especially Canada. Once again, however, the lack of funds and general resources constituted a major obstacle.

8. Mr. AUBOURG (Haiti) said that slavery had been abolished in Haiti almost 200 years earlier and did not exist anywhere in the country. Owing to the very precarious economic situation, however, children as well as adults, particularly in impoverished rural areas, were forced to leave their homes and search for work in order to survive. They lived in very difficult conditions, but were not slaves. If slavery existed anywhere in Haiti, the authorities would take measures to combat it.

9. Mrs. DENERVILLE (Haiti) added that there were some cases of enforced domestic service, but not of slavery. The Government had developed a system of inspection and integration for migrant children who had left their families in search of subsistence: specially trained social workers made visits to the home and workplace to ascertain their living conditions, check on their schooling and even recommend sanctions where appropriate. Also, to prevent any instances of trafficking in children, it had to be ensured that all purported adoptions were bona fide. A bill dealing with the plight of migrant minors was being drafted, to protect them from abuse and to keep them from lives of crime, prostitution or drug-trafficking.

10. Mr. AUBOURG (Haiti), acknowledging the Committee's criticisms of his Government's report, recalled the context of the resumption of power by the current Government under very special conditions. The report was meant only to be a renewal of relations with the Committee. As his Government got on with its work and as political, economic and financial conditions improved, the Committee would receive a full report. It should accept the current report for what it was - a gesture of good will. His delegation itself felt encouraged by the re-establishment of contact to move ahead and accomplish more, and would take the Committee's questions as guidelines.

11. Mrs. DENERVILLE assured the Committee that the Ministry of Defence was still in existence and operating under constitutional regulations. The Interim Police Force was made up of 2,500 former military men as well as selected former

Guantanamo refugees. An initial group of 100 had begun training at the Regina Police Academy in Canada and was continuing it in Haiti at the National Police Academy in Port-au-Prince. Starting in February 1995, approximately 400 candidates a month would take part in a four-month training programme to become police officers. In May 1995 the first graduates from the National Police Academy would be assigned to posts throughout the country.

12. Although the 1987 Constitution provided for two separate forces, the police and the army, that provision had never been implemented until the Act Establishing the National Police Force of Haiti had been passed on 20 December 1994. That Act set up a decentralized police force under the Ministry of Justice, reporting to a Director-General appointed for three years as Police Commander in Chief, to head a Department working in close conjunction with the Administration and General Services Department, the Central Administrative Police Department and the Central Judicial Police Department. Other administrative bodies provided for were the Higher National Police Council, the General Police Inspectorate, the National Police Academy and the National Police School. The many troubles Haiti had experienced with its police force were well known. However, the training now put in place should transform it into an effective force and, it was to be hoped, a good one. At the moment it could barely keep order, but that would eventually change for the better. Not too much could be expected after three years of an illegal regime. The Government was monitoring the transition of the police force carefully.

13. Mr. BRUNI CELLI remarked, with reference to amnesty, that the only legislation implementing article 147 of the 1987 Constitution establishing the presidential prerogative of amnesty had been the Amnesty Act of 6 October 1994, adopted on the eve of President Aristide's return to power, pursuant to the Governors Island Agreement and as specifically stipulated in the agreement between the United States Government and the military authorities. That Act was very vague and provided no definition of the crimes covered, thereby giving rise to much uncertainty. The Act specified amendment of the old 1860 Amnesty Act, which had allowed presidential amnesty only for political crimes, i.e. crimes against the Republic and the internal and external security of the State. According to the interpretation of the highest authorities of Haiti, the 1994 Amnesty Act covered only crimes against the Constitution arising from the 1991 coup d'état: consequently, that did not include crimes against persons such as murders, disappearances, torture, rape and the like, whether or not committed for political reasons. That was why the work of the National Commission on Truth and Justice was so crucial, for it would be able to investigate crimes other than the constitutional ones covered by the Amnesty Act.

14. The representatives of Haiti had insisted that slavery did not exist, and yet four years earlier, under the first Aristide Government, the problem of Haitians labouring in the sugar cane fields in the Dominican Republic in conditions of near-slavery had been taken up with the Government of the Dominican Republic and certain agreements to ensure better working conditions had been reached. He would like to know whether the Government intended to review the question, for it was more than a matter of simple migration.

15. Mrs. HIGGINS asked for further clarification of the Amnesty Act in the light of the remarks of Mr. Bruni Celli, who would limit its scope to offences

of a constitutional order. She, however, had been led to a different understanding of the reach of the Amnesty Act by the explanations of Mr. Aubourg, who had stated that the law allowed the State to deal with the penal aspects of the matter, while civil actions by individuals could at the same time continue unimpeded. Did the Act in fact relate to all penal matters concerning all depredations against individuals by those in authority, even if committed with a political motive?

16. She had been very interested to learn of the admirable training programmes the Government was establishing for the judiciary and the police, but would like in addition to know what was being done to ensure the sifting out of those who were inappropriate for the holding of such posts by virtue of their past records and were beyond all hope of training.

17. Mrs. MEDINA QUIROGA asked whether the Government was planning to set up a mechanism to purge from the internal security forces undesirable persons who had not been purged at the outset. Also, she wondered if there was currently any transitional mechanism to deal with human rights issues. She asked how long the National Commission on Truth and Justice would continue to operate and whether it could provide information to the courts and bring complaints.

18. Regarding the Amnesty Act, she, too, had been surprised by the discrepancy between the interpretation of the representative of Haiti and that of Mr. Bruni Celli as to its scope, and would like to know whether it did indeed cover criminal prosecution of all crimes. In the case of Chile, for instance, only criminal prosecution had proved effective; failing that, there would have been no hope of initiating successful civil proceedings.

19. Mr. FRANCIS said that he had understood that the Amnesty Act was in line with the usual Latin American approach to asylum and had therefore assumed that it would cover events that had occurred under the Cédras regime. Upon his reinstatement, President Aristide had assured that there would be no retaliation but had not said that such assurance would apply to crimes on which the law must take its course.

20. He asked Mrs. Denerville whether, before all United States troops left, any thought had been given to deploying the multinational force, in selected areas of the country where full amnesty would be offered to persons who handed in their weapons.

21. Mr. AUBOURG (Haiti), turning first to the question of amnesty, said that under Haitian law many crimes could be described as political crimes, such as a plot or attempt against the person of the Head of State or against the security of the State, and that the Head of State had the power under the Constitution to declare an amnesty in such cases. The investigations of the National Commission on Truth and Justice must proceed before it could be determined in what cases amnesty was appropriate. A "blood crime", no matter what the motive, would be the object of criminal proceedings, from which civil damages might result.

22. Slavery did not exist in Haiti, but the conditions under which some Haitian workers laboured outside Haiti - for example, in the Dominican Republic - were akin to slavery, a situation which the President had condemned. Their

repatriation was a prime concern of the Government, but the country's economic plight prevented it from doing everything it should to remedy the situation. He would convey the concerns of the Committee to the Haitian authorities.

23. Mrs. DENERVILLE (Haiti) said that while the Front révolutionnaire du peuple haitien (FRAPH) no longer existed as an organization, its members still sowed fear and trouble in Haiti. Following the return of President Aristide, a nationwide campaign had been launched to promote civil and political rights and encourage victims to bring complaints before the courts. Although no specific mechanism had been established yet to handle such complaints, personnel in the Ministry of Justice would be trained for that purpose.

24. As to the Government's effort to weed out certain members of the armed forces, she said that it had been necessary to respond in the light of the prevailing chaotic circumstances. Some of the military personnel concerned had been ordered to relinquish their weapons and had been dismissed with two years' early retirement benefits.

25. Mr. BRUNI CELLI said that the reporting State had made valiant efforts to overcome a difficult situation created by three years of military dictatorship. The establishment of the Interim Public Security Force as an entity separate from the armed forces was one of the most important achievements following the restoration of democracy, inasmuch as all security services previously had been in the hands of the armed forces and paramilitary groups and section chiefs - the latter a long-standing symbol of the military autocracy - had been formally eliminated.

26. It was also important to take note of the recent electoral law, the establishment of electoral authorities, the establishment of the electoral roll and the initial preparations for the parliamentary elections. He also welcomed the determination of the Government, and the President in particular, to seek reconciliation and political accommodation.

27. He nevertheless remained particularly concerned at the uncertainties surrounding the status of the armed forces and the lack of clarity as to the command structure and composition of the military. Information concerning the progress of the restructuring effort should be provided.

28. A further cause for concern lay in the fact that, notwithstanding the weapons collection efforts of the Multinational Force in Haiti, many weapons remained hidden. That was particularly dangerous at a time when preparations for elections were under way and the Government was striving to legitimize and strengthen the political process.

29. Mrs. MEDINA QUIROGA said that in the light of the many difficulties facing the reporting State, it would be helpful if the Government established a mechanism separate from the judiciary to process complaints of human rights violations. It also should establish a mechanism for lodging complaints against specific police officers where evidence demonstrated that they had been involved in violations of human rights.

30. In the light of article 278-2 of the Constitution, steps must be taken to ensure that the Covenant functioned properly in the event that a state of siege was declared, since it was her understanding that the Covenant had the status only of an ordinary law.

31. She would be less concerned about the amnesty issue if the Government or the National Commission on Truth and Justice interpreted the law on amnesty as meaning that an amnesty could be declared only in respect of crimes and offences against the security of the State, and not in respect of crimes and offences against persons. The Government and the Commission could invoke the Committee's emphatic position on the issue, namely, that violations of human rights were unpardonable.

32. Mr. FRANCIS said that he was convinced of the reporting State's sincerity in its efforts to meet its obligations under the Covenant and to create a climate in which human rights were respected. In the light of the precarious security situation in the country, both short-term approaches and long-term to security issues were required. An effective gun-control law was needed to create an environment for secure and successful elections.

33. Mr. KRETZMER emphasized that the Committee's objective was to assist the reporting State in protecting the human rights of the people of Haiti. Given the overwhelming problems which the Government faced and the limited resources at its disposal, he was reluctant to offer advice concerning priorities.

34. Endorsing Mrs. Medina Quiroga's recommendation, he added that independent complaint procedures to handle allegations of human rights violations were needed to provide redress in individual cases, but also to demonstrate to the population that the armed forces were subject to civilian control.

35. Mr. KLEIN commended the delegation for the sincerity with which it had responded to the Committee's question, which had illustrated the Government's willingness to protect human rights. Emphasizing the need to re-establish the people's trust in the State, he warned that the recently restored legitimate Government of Haiti might lose authority if it could not fulfil its most important task, which was to ensure the safety of the people.

36. Mr. LALLAH welcomed the candid answers provided by the representatives of Haiti, but stressed that the Committee's goal was to discuss a Government's obligations under the Covenant and that problems should therefore be related to the Covenant. In that regard, he questioned the distinction drawn by the delegation between "blood crimes" and crimes against State security in order to explain the recently adopted Amnesty Act. He agreed with Mrs. Medina Quiroga that the adoption of an amnesty law would encourage a culture of impunity.

37. When devising human rights training programmes for judges and police officers, it was vital to include information about the obligations of the State under the Covenant, particularly with respect to judges, whose decisions often had a much greater effect on respect for human rights than the instructions of the President or the Government.

38. Mrs. EVATT thanked the delegation for the useful information it had provided to the Committee and hoped that the Government of Haiti would fully appreciate the significance of questions relating to the National Commission on Truth and Justice, the Amnesty Act, the police and armed forces and the judicial system for the protection of human rights under the Covenant. Endorsing the view expressed by Mrs. Medina Quiroga regarding the Amnesty Act, she suggested that a commission should also be established to ensure the continuous monitoring of laws and judicial practices in Haiti and to verify their consistency with the Covenant.

39. Mr. POCAR said that the delegation's candid responses to the Committee's questions had provided a clearer picture of the measures currently being adopted in Haiti. Supporting the Committee's position on the Amnesty Act, he said he believed it would be wrong to grant amnesty for any crime that involved human rights violations under the Covenant. It was reassuring to learn that measures were being adopted to address the problem of forced labour with regard to minors, an issue that was dealt with in article 8 of the Covenant.

40. He shared the view that programmes aimed at educating judges, police officers and the general population should include information about the rights guaranteed under the Covenant as a way to encourage a culture of human rights in Haiti. Finally, he recommended that the Government should consider ratifying the Optional Protocols to the Covenant.

41. Mr. PRADO VALLEJO said that there was great concern, not only among the members of the Committee but in Latin American countries in general regarding the question of amnesty. As far as he had understood events, amnesty had not been negotiated or accepted by President Aristide, but had been imposed on the current Government of Haiti as a result of negotiations for the withdrawal of General Cédras. He appealed to the delegation to inform its Government that the consensus of the Committee was that it would be wrong to grant amnesty, thereby setting a precedent of impunity that would impede the restoration of democracy in the country. It was imperative to investigate and punish the systematic and violent crimes of the dictatorship and to ensure that such investigations would continue after President Aristide left office.

42. With regard to programmes to teach respect for human rights in schools, the armed forces and the police, the United Nations Centre for Human Rights could provide vital assistance. In addition, the Government should ensure that all those who had participated in crimes committed under the regime of General Cédras were removed from the armed forces and police, and that the National Commission on Truth and Justice began to function as soon as possible so that the ratification of the Optional Protocols to the Covenant could be hastened.

43. Lastly, he commended Mr. Bruni Celli, Special Rapporteur of the Commission on Human Rights on the situation of human rights in Haiti, for the invaluable information and recommendations he had supplied over the years and for his role in providing support for the democratization of Haiti and for respect for human rights in that country.

44. Mr. BUERGENTHAL commended the delegation for its enthusiasm and commitment to introducing human rights training and to improving the justice system in Haiti. He hoped that the questions raised by the Committee would serve as a check-list for the Government as to the type of information the Committee would request in the future regarding the situation of human rights in that country. He supported the position of the Committee regarding the Amnesty Act and agreed that Haiti's international obligations should be included in official training programmes in order to universalize the struggle for respect for human rights and give strength to national efforts. He urged the Government of Haiti to ratify the Optional Protocols to the Covenant and to recognize the jurisdiction of the Inter-American Court of Human Rights.

45. Mr. ANDO reiterated the gratitude expressed by other Committee members to the representatives of Haiti for their honesty and urged the Government of Haiti to recognize its international obligations under the Covenant. When devising human rights training programmes for members of the judiciary, the military and the police, the Government should not hesitate to request the assistance of the international community.

46. Mrs. DENERVILLE (Haiti) thanked the Committee for its constructive comments and recommendations, which she would transmit to her Government. The issue of the ratification of the Optional Protocols to the Covenant could be addressed as soon as parliamentary elections had taken place.

47. The CHAIRMAN thanked the delegation of Haiti for its timely and frank responses to the Committee's questions and commended Mr. Bruni Celli, the work he had accomplished as Special Rapporteur of the Commission on Human Rights on the situation of human rights in Haiti, and for the time, energy and intellectual activity he had devoted to restoring democracy in that country.

The meeting rose at 6 p.m.

UNITED NATIONS

CCPR

International Covenant on Civil and Political Rights

Distr.
GENERAL

CCPR/C/SR.1399
10 April 1995

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

Fifty-third session

SUMMARY RECORD OF THE 1399th MEETING

Held at Headquarters, New York,
on Tuesday, 28 March 1995, at 10 a.m.

Chairman: Mr. AGUILAR

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ELECTION OF THE CHAIRMAN AND OTHER OFFICERS OF THE COMMITTEE (continued)

ORGANIZATIONAL AND OTHER MATTERS

Draft general comment on article 25 of the Covenant

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95-80528 (E)

The meeting was called to order at 10.25 a.m.

ELECTION OF THE CHAIRMAN AND OTHER OFFICERS OF THE COMMITTEE (continued)

1. Mr. ANDO nominated Mr. Bhagwati and Ms. Chanet for the offices of the third Vice-Chairman and Rapporteur, respectively.

2. Mr. MAVROMMATIS, Mr. LALLAH, Mr. PRADO VALLEJO and Mrs. HIGGINS seconded the nominations.

3. Mr. Bhagwati was elected Vice-Chairman and Ms. Chanet was elected Rapporteur by acclamation.

ORGANIZATIONAL AND OTHER MATTERS

Draft general comment on article 25 of the Covenant (CCPR/C/53/CRP.1)

4. Mr. BÁN, speaking as Chairman/Rapporteur of the Working Group on Article 40 of the Covenant, introduced the draft general comment on article 25 (CCPR/C/53/CRP.1), which had been prepared by the Working Group on the basis of a draft by Mrs. Evatt.

5. He requested the Committee to bear two considerations in mind. First, the Committee had to choose between interpreting article 25 as a procedural guarantee for citizens that had to be respected by States parties regardless of the bodies elected, or interpreting it as a document which enshrined substantive rights. In the latter case, citizens would be empowered to participate in bodies exercising real power. The actual text of the draft comment reflected the second approach.

6. In addition, the draft highlighted some of the broader issues surrounding article 25. Those issues also had some bearing on articles 19 and 22 of the Covenant.

7. Mrs. EVATT indicated that the difficult issues had proved to be a definition of the concept of "conduct of public affairs" and the extent of citizens' participation in those affairs. The text of the draft comment currently before the Committee implied that the validity of executive and legislative power derived from the participation of individuals in the totality of that power. Furthermore, the Committee should bear in mind the allocation of judicial powers, the issue of reserved powers, for example those of monarchs, and questions of equality and non-discrimination in the context of representation.

8. Mr. BRUNI CELLI said that the matter of an independent electoral authority should be dealt with in a separate paragraph rather than being incorporated into paragraph 18 of the draft general comment. He also noted that the practice of employing observers when conducting elections was currently very widespread. The draft made no reference to a country's willingness to receive such observers, and he felt it would be useful to include an appropriate reference. On a more general level, certain paragraphs of the draft made reference to a

number of different topics; he wondered whether it might not be possible for the Committee to organize its ideas a little more clearly, which would make it easier for States parties to digest the contents.

9. Mr. FRANCIS said he was unsure whether the nature and behaviour of political parties would be better dealt with in a general comment on article 25 or article 22. He pointed out that in countries which had a party political system, the leader of the opposition played an institutionalized role under the constitution. In the context of political power, the person leading the opposition owed his position to the party machinery which elected him, and if that party did not have an election process as free and fair as that obtaining in the country as a whole, problems might arise.

10. Mr. KRETZMER said that a special section on the right to citizenship should be added to the draft. If the right to participate in public affairs under the Covenant was restricted to citizens, it was naturally crucial to know about the criteria for acquiring citizenship.

11. Mr. KLEIN endorsed the substantive view of article 25 outlined by Mr. Bán and Mrs. Evatt, but wished the Committee to be aware of some of its disadvantages. He cited the example of the Treaty of Maastricht and the issue of its compatibility with the German Constitution. The treaty had been challenged on the ground that the German people's right to elect representatives to the legislature would be meaningless if the latter transferred its powers to the European Union. The Committee should also clarify the distinction between eligibility for office and incompatibility of offices once elected; any grounds restricting eligibility were obviously much more serious than problems arising from incompatibility. Lastly, greater emphasis needed to be placed on the right to judicial protection and review, particularly in the context of subparagraph (c) of article 25.

Paragraph 1

12. Mr. ANDO said that the side headings introduced in the draft were helpful, but that the Committee should approve that change in format. It should also decide whether the issues discussed in paragraph 24 and following should be further elaborated or limited to their relevance to article 25.

13. The last sentence of paragraph 1 appeared unnecessary, and could be deleted.

14. Mrs. HIGGINS said that she favoured retaining the last sentence of paragraph 1 and perhaps elaborating on the Committee's reasons for issuing the general comments, since the provisions of article 25 were not self-evident.

15. Mr. LALLAH observed that the concept of a general comment itself was a product of the cold war, since during that era, not all members of the Committee were comfortable with issuing comments on individual reports, preferring to make generalized comments based on information gathered from many reports.

16. Mr. BUERGENTHAL noted that the only authorities cited were cases based on individual petitions submitted to the Committee under the Optional Protocol.

The concluding comments on State party reports, however, contained many other valuable observations that could show the evolution in Committee practice and could help to support its position.

17. Mr. BHAGWATI associated himself with the suggestion of Mr. Bruni Celli that particular emphasis should be placed on the independent electoral authority and on the practice of appointing electoral observers. He did not see the need to delete the last sentence of paragraph 1, but the beginning of the penultimate sentence could be redrafted to read: "Article 25 lies at the core of democratic government".

18. Mrs. EVATT said that references to concluding comments could be included in the form of footnotes to the text.

19. Mr. POCAR agreed that more weight could be given to the Committee's recommendations on reports of States parties, even though the practice had been followed for only a few years. He would prefer to retain and expand the last sentence of the first paragraph. With regard to its second sentence, it was actually article 2 which imposed the obligation on States to adopt measures, and he preferred not to see a right in and of itself reduced to a State obligation.

20. Mr. FRANCIS said that he saw some difficulty in defining the concept of "public affairs" as used in the first sentence of the paragraph; it should encompass more than government processes in a democratic system with a political party structure.

21. Mrs. MEDINA QUIROGA said that she supported Mr. Buergenthal's suggestion and saw a positive benefit in incorporating the Committee's case-law into its general comments. Rather than stating its views on the application of article 25, the Committee was giving its interpretation of that article, which must be stressed in the text.

22. Mrs. HIGGINS had some hesitation about referring to concluding comments. The case-law which had developed through communications under the Optional Protocol dealt with particular points of law that had emerged in individual cases. Drawing attention to the general shortcomings of States parties might cause some discomfort, however.

23. Referring to a point raised by Mr. Pocar, she suggested that the second sentence should be redrafted to read: "Whatever form of constitution or government is adopted by a State, article 25 guarantees an effective opportunity to enjoy the rights it protects. It necessarily follows that States must adopt such legislative or other measures as may be necessary to ensure that citizens have an effective opportunity to enjoy the rights it protects."

24. Mr. LALLAH agreed with Mrs. Higgins that the Committee's case-law was clear and precise, while some research would be required regarding comments on State party reports. In order to make a more authoritative statement, the last sentence of the paragraph should be amended to read: "The Committee considers that the rights contained in article 25 of the Covenant emphasize the important role played by democratic Government in securing the protection of rights."

25. Mr. BÁN said that the use of the term "democratic" gave him pause since it was not clear to him that article 25 required States parties to have a democratic form of government. The absence of democratic institutions need not necessarily result in any failure to comply with article 25.

26. Mr. KRETZMER said that the Committee should avoid linking its views on the central importance of democracy to human rights with its reasons for issuing the general comment.

27. Mr. ANDO said that, since the penultimate sentence of the paragraph gave the Committee's understanding of article 25, the last sentence appeared repetitious, but that it could be useful to expand the explanation of the central importance of that issue.

28. Regarding the issue raised by Mr. Bán, it was true that some countries still governed by monarchies had good guarantees of human rights. In his view, the general comment should not go into the meaning of democracy but should confine itself to procedure.

29. Mr. EL-SHAFEI said that the Committee's difficulty in reaching agreement on that paragraph was surprising. He preferred the formulation suggested by Mr. Lallah for the last sentence because it spoke of the important role of States parties in securing rights under article 25.

30. Mrs. HIGGINS said that the Committee would be remiss in its duty if it did not make it clear to States that in the absence of a working democracy, it was extremely hard to guarantee at least some of the rights embodied in the Covenant. The Committee should commit itself publicly to the view that the wording of article 25 implied a plurality of choices among candidates representing alternative political views.

31. Mrs. MEDINA QUIROGA, supporting the view expressed by Mrs. Higgins, said it was possible to imagine that a non-democratic State which was not violating the other rights contained in the Covenant would none the less be violating those contained in article 25.

32. Mr. KLEIN agreed strongly with the view expressed by Mrs. Higgins. Given recent political developments in the world, the Committee should take the opportunity to define clearly what was meant by democracy.

33. He supported the proposal that the last two sentences of the paragraph should be run together, thereby avoiding the need to include the words "has decided to explain".

34. The CHAIRMAN, speaking in his personal capacity, said that it would be good to take account of Mr. Pocar's suggestion regarding the final sentence of the paragraph. He also agreed with Mrs. Higgins' modification of the second sentence, and with Mr. Bhagwati's suggestion that it should be stated that article 25 lay at the core of democratic government.

35. Mr. POCAR suggested that the end of the paragraph should be modified to read: "Article 25 supports the process of democratic government based on the

consent of the people and in conformity with the principles of the Covenant; in the Committee's view, the important role played by democratic government (or 'played by such process') in securing the protection of rights must be emphasized."

36. Mr. BUERGENTHAL suggested that the word "critical" might be substituted for the word "important".

37. Mr. POCAR said that that suggestion was acceptable.

38. Mrs. EVATT welcomed the preponderance of views in favour of including a comment supporting full democracy, and agreed with Mr. Pocar's proposal for amending the end of the paragraph, as sub-amended by Mr. Buergenthal.

39. Mr. LALLAH proposed that, in the second sentence, the wording "legislative or other measures" should be replaced by "legislative and other measures", and that the semicolon following the words "the principles of the Covenant" should be replaced by a full stop.

40. Paragraph 1, as amended, was adopted.

41. Mr. ANDO expressed agreement with the point made by Mrs. Medina Quiroga that the absence of democracy would be a violation of article 25 even where other human rights were respected. It was also true that under a democratic system situations could arise in which human rights were not respected.

42. Mr. KLEIN agreed with Mr. Ando, and recalled that paragraph 27 of the draft general comment made it clear that there were limits to the exercise of the rights contained in article 25 of the Covenant.

43. Mr. FRANCIS said that he considered the expression "public affairs" to have a wider meaning than that in which it was used in the context of the first paragraph.

Paragraph 2

44. Mr. KRETZMER suggested that the end of the paragraph should read: "Article 25 deals with the rights of individual citizens to participate in the conduct of public affairs, which, as individual rights, can give rise to claims under the first Optional Protocol."

45. Mrs. MEDINA QUIROGA expressed concern about the respective meanings of "citizen" and "national" of a country. She wondered whether "citizen" had the same meaning as "ciudadano" in Spanish, and whether the defining characteristic was having the right to vote.

46. The CHAIRMAN said that it was important to be aware of the fact that the terms could have different meanings. Certain States made a clear distinction between "citizens" and "nationals".

47. Mrs. HIGGINS agreed that it was a difficult problem. The word "citizen" had, however, been used correctly in the English text, since in that context it was a matter of the right to vote.

48. It was important to differentiate between the right of self-determination, as described in article 1 of the Covenant, and the right of the individual to vote, which was covered by article 25; the latter also went beyond the right to vote, in that it also concerned participation in public affairs.

49. Mr. LALLAH suggested that the word "citizens" could be avoided in paragraph 2, which concerned the rights of individuals.

50. Mr. BUERGENTHAL agreed with Mrs. Higgins regarding the difference between "citizen" and "national", and with Mr. Kretzmer regarding the wording of the end of the paragraph.

51. Mrs. EVATT, supported by Mr. Ando, proposed that the Committee should adopt the wording suggested by Mr. Kretzmer. She also proposed that the paragraph should begin "The rights under article 25 ...", and that the final sentence of the paragraph should be amended to refer to "the rights of individuals".

52. Paragraph 2, as amended, was adopted.

Paragraph 3

53. Mr. BUERGENTHAL said that, since some countries made unreasonable distinctions between natural-born citizens and naturalized citizens, virtually excluding naturalized citizens from participation in various aspects of public life, the paragraph should include stronger language on non-discrimination.

54. Mrs. HIGGINS wondered whether "deprivation of citizenship" in the last sentence referred to citizenship or nationality. If it implied deprivation of nationality, a phrase should be added to indicate that loss of nationality which entailed statelessness was unreasonable. If it implied the deprivation of citizenship, she wondered whether that pertained to the right to vote or to the right to enter the country as well. In fact, it was not clear that the last sentence was really necessary.

55. Mrs. EVATT, referring to Mr. Buergenthal's remarks, informed the Committee that an earlier draft of the general comment had included the phrase "whether by birth or by naturalization" after "every citizen" in the second sentence. It had subsequently been deleted because the Working Group had decided that it would be reasonable to impose restrictions, in certain cases, for example, to establish a waiting period before naturalized citizens were entitled to vote. The Committee should decide whether such restrictions should be dealt with in the paragraph.

56. Turning to Mrs. Higgins' remarks, she said that each country's definition of citizenship would determine whether individuals enjoyed the rights embodied in article 25. Clearly, those rights could be lost either as a result of a restriction whose reasonableness could be assessed under article 25, or through a loss of citizenship. The Committee should also consider cases of arbitrary

deprivation of citizenship which resulted in a loss of rights. The last sentence could be deleted if necessary. The Committee must decide on the scope of the paragraph.

57. Mrs. HIGGINS noted that the Committee did not generally consider limitations of rights which were not already implied. For example, the Committee had seen in States parties' periodic reports that many countries deprived prisoners of the right to vote, which was completely unrelated to nationality. Therefore, perhaps the sentence should be replaced by a sentence on the implied limitations to exercising the right to vote. Concerning the distinction between natural-born and naturalized citizens, she said that it was perfectly reasonable for States to require a waiting period before new residents could vote, but that once they became naturalized, they should be considered full and equal citizens in every way.

58. Mrs. MEDINA QUIROGA noted semantic discrepancies between the English and Spanish versions. Article 25 did not deal with nationality but rather with the right to vote and to be elected to public office. The Spanish term ciudadanos specified that concept and it should be made clear in the English version as well.

59. Article 25 implied that persons eligible to vote met certain requirements established by law, for example the attainment of legal age. Perhaps the general comment should contain a separate paragraph spelling out those requirements. She drew attention to paragraph 10, which referred to the suspension of the right to vote during detention. It was extremely disturbing that, in certain countries, prisoners were deprived of the right to vote even before they were convicted.

60. The CHAIRMAN noted that the French version used the word citoyens and the Spanish text, ciudadanos, and that "national" meant "citizen" in the legal systems of most countries where those languages were used. The problem seemed to lie with the English text. At the request of Mr. Buergenthal, he read out the Spanish text.

61. Mr. KLEIN said that he opposed deleting the final sentence. Obviously, a loss of citizenship meant a loss of voting privileges, but a distinction must be made between that situation and restrictions placed on a citizen's right to vote. The Committee should also consider the possibility that a State might deny the right to vote through the deprivation of citizenship.

62. Concerning Mr. Buergenthal's remarks, he said that it would be excessive for the Committee to force States to treat natural-born and naturalized citizens as equals without any distinction whatsoever. (For example, he believed that the United States Constitution required presidential candidates to be born in the United States of America.) The general comment should require that such distinctions must be based on reasonable, and not arbitrary, grounds.

63. Mr. KRETZMER, reiterating his earlier general remarks, said that, in addition to describing the provisions of law governing citizenship, States should spell out the legal impediments to acquiring citizenship and provide information as to whether significant numbers of persons residing in their

territories were unable to participate in the political process because they were not citizens.

64. Mr. LALLAH noted that the discussion had centred on semantic differences but that the question went much deeper. The Committee should consider the object and purpose of the rights embodied in article 25 and whether it was fair to deprive nationals of the right to participate in public affairs which affected their lives. In English, the term "citizen" included not only natural-born citizens but also those persons who had been naturalized and had made their lives in that country. Perhaps the concepts in the French and Spanish systems predated the Covenant and should be reassessed with a fresh eye.

65. The Working Group had discussed the issue of natural-born and naturalized citizens but, in the end, had decided that the drafting difficulties it posed should be resolved by the Committee. The Committee should clarify the concept of citizenship in the final sentence of the paragraph. In some States, deprivation of citizenship meant loss of civic rights while, in others, persons convicted of crimes were deprived of their right to vote under criminal legislation.

66. The CHAIRMAN clarified that ciudadano in Spanish referred to every national who had the right to vote or be elected, whether or not that person had been born in the country. In a few Spanish-speaking countries, persons could not seek the office of President unless they were natural-born citizens. That did not apply to candidacy for other national offices, however.

67. Mr. POCAR wondered if the sentence requiring State reports to describe provisions of law should be clarified. He proposed deleting the words "within the territory and subject to the jurisdiction of the State" from the first sentence, even though it was the formulation used in article 2 of the Covenant. In the past, combining the two conditions had created problems, since it was perfectly possible for a State to incur the obligation to protect individual rights when only one of those conditions existed.

68. Mrs. MEDINA QUIROGA thanked Mr. Lallah for highlighting the essence of the problem with regard to the interpretation of citizenship. Indeed, the first sentence of article 25 was not fully elaborated. Had it provided a more specific enumeration of undue restrictions on the right to vote, the confusion over the terms used in Spanish and in English would not have arisen. In any case, the Spanish made sense only if the word nacionales was used, meaning that anyone who had made his or her life in a particular country should enjoy the rights guaranteed under article 25 without restriction. Perhaps the draft general comment should attempt to be more precise than the language of the Covenant by including a full paragraph on acceptable restrictions on the right to vote.

69. Mr. BUERGENTHAL said that the remarks made by Mr. Lallah and Mrs. Medina Quiroga warranted further consideration. He agreed with Mr. Pocar that the phrase concerning territory should be deleted from the first sentence. If the last sentence continued to be a problem, perhaps it could be amended to read: "If provisions are made to restrict citizenship rights, the grounds

should not be arbitrary or unreasonable." In its current form, the sentence seemed to permit the deprivation of citizenship.

70. Noting that the restriction on candidacy for the United States presidency was probably more historical than reasonable, he suggested appending the phrase "including, in particular, the distinction between natural-born and naturalized citizens" to the end of the sentence beginning "Any restrictions imposed ...".

71. Mrs. EVATT acknowledged that the paragraph posed a problem. If the Spanish text could be interpreted differently from the English, the Committee should take a fresh look at how States defined citizenship and how their definition affected the exercise of the rights enshrined in article 25 of the Covenant. The intent of the paragraph was simply to identify who could exercise those rights and to stress that eligible persons should not be arbitrarily excluded. The issue of natural-born versus naturalized citizens could also be dealt with in that framework. She proposed that the discussion should be suspended until further consideration could be given to the appropriateness of the word "citizenship".

72. Mr. PRADO VALLEJO agreed that further reflection was necessary not only on what was explicitly stated in the paragraph but also on what was implied. In that connection, he recalled that, for nearly a decade, the Brazilian dictatorship had denied certain citizens the right to vote or stand for election on purely political grounds.

73. Mrs. HIGGINS agreed that greater thought should be given to all the aspects raised by Mr. Lallah. Moreover, the Committee had not even considered the consequences of the liberal granting of citizenship in those countries with a generous immigration policy. She believed that such countries should be encouraged to grant the right to vote to immigrant workers. However, if citizenship also entitled them to enter and reside in the country indefinitely, it could cause problems.

The meeting rose at 1 p.m.